March 15, 2010

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Anoopam Attari**
Tax Registry No. 921937
Manhattan Court Section
Disciplinary Case No. 84870/009

The above named member of the service appeared before Assistant Deputy Commissioner David S. Weisel on November 23, 2009 and was charged with the following:

DISCIPLINARY CASE NO. 84870/09

1. Said Police Officer Anoopam Attari, assigned to the 106th Precinct, on or about October 17, 2008, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer wrongfully exaggerated her injury or medical condition by using a cane to assist herself while reporting to the Medical Division, then was subsequently observed by Medical Division personnel performing physical activities without the assistance of a walking aid.

P.G. 203-10, Page 1, Paragraph 5 — **GENERAL REGULATIONS**
P.G. 205-01, Page 2, Paragraph 4 — **REPORTING SICK**

2. Said Police Officer Anoopam Attari, assigned to the 106th Precinct, on or about November 25, 2008, while off-duty and while being designated Chronic Absent-Category B, requested a sick excusal and did not report for her scheduled tour of duty when said date was her next scheduled tour of duty after having been found fit for duty by the District Surgeon.

P.G. 205-45, Page 2 — **ADDITIONAL DATA CHRONIC ABSENCE CONTROL PROGRAM ADMINISTRATIVE REVIEW**

3. Said Police Officer Anoopam Attari, assigned to the 106th Precinct, on or about November 24, 2008, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that, on said date, said Officer failed to sign out as required upon being released from physical therapy.

P.G. 203-10, Page 1, Paragraph 5 — **GENERAL REGULATIONS**

In a Memorandum dated January 19, 2010, Assistant Deputy Commissioner Weisel Sarner found the Respondent Not Guilty of Specification No. 1 and Guilty of Specification Nos. 2 and 3. Having read the Memorandum and analyzed the facts of this instant matters, I approve the findings, but disapprove the penalty.

In light of Respondent Attari's prior, similar disciplinary matter, including the extent of her behavior and continued disregard of Department sick policy and procedure, a greater penalty is merited.

As such, Respondent Attari is to forfeit 30 days already served on suspension, and is to forfeit an additional 15 days to be served on suspension, and the Respondent is also DISMISSED from the New York City Police Department; however, this penalty of dismissal will be held in abeyance pursuant to Section 14-115 (d) of the NYC Administrative Code for a period of one year, during which time Respondent Attari will remain on the force at the Police Commissioner's discretion and may be terminated at any time without a further hearing.

Raymond W. Kelly
Police Commissioner

OFFICE OF THE POLICE COMMISSIONER

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March 15, 2010

Memorandum for: First Deputy Commissioner
Attention: Chief of Personnel

Subject: **ADMINISTRATIVE TRANSFER OF A UNIFORMED MEMBER OF THE SERVICE**

1. **P.O. Anoopam Attari, Tax # 921937,** was recently the subject of Disciplinary Case No. 84870/09.

2. Separate and apart from the disciplinary process, the Police Commissioner also mandates that, upon restoral to Full-Duty, P.O. Attari be immediately transferred to P.S.B. Precinct enforcement command located outside the geographic confines of Queens, subject to the exigencies of the Department.

3. Further, P.O. Attari will not be the subject of any future transfer without the explicit approval of the Police Commissioner.

4. Forwarded for necessary attention.

BY DIRECTION OF THE POLICE COMMISSIONER

Michael E. Shea
Assistant Chief
Commanding Officer
Police Commissioner's Office

The City of New York

POLICE DEPARTMENT

January 19, 2010

MEMORANDUM FOR: Police Commissioner

RE: Police Officer Anoopam Attari
Tax Registry No. 921937
Manhattan Court Section
Disciplinary Case No. 84870/09

The above-named member of the Department appeared before the Court on November 23, 2009, charged with the following:

1. Said Police Officer Anoopam Attari, assigned to the 106th Precinct, on or about October 17, 2008 engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer wrongfully exaggerated her injury or medical condition by using a cane to assist herself while reporting to the Medical Division, then was subsequently observed by Medical Division personnel performing physical activities without the assistance of a walking aid.

P.G. 203 – 10, Page 1, Paragraph 5 – GENERAL REGULATIONS
P.G. 205 – 01, Page 2, Paragraph 4 – REPORTING SICK

2. Said Police Officer Anoopam Attari, assigned to the 106th Precinct, on or about November 25, 2008, while off-duty and while being designated Chronic Absent-Category B, requested a sick excusal and did not report for her scheduled tour of duty when said date was her next scheduled tour of duty after having been found fit for duty by the District Surgeon.

P.G. 205 – 45, Page 2 – ADDITIONAL DATA CHRONIC ABSENCE CONTROL PROGRAM ADMINISTRATIVE REVIEW

3. Said Police Officer Anoopam Attari, assigned to the 106th Precinct, on or about November 24, 2008, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that, on said date, said Officer failed to sign out as required upon being released from physical therapy.

P.G. 203 – 10, Page 1, Paragraph 5 – GENERAL REGULATIONS

The Department was represented by Penny Bluford-Garrett, Esq., Department Advocate's Office, and the Respondent was represented by Michael Martinez, Esq.

The Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Not Guilty of Specification No. 1, and Guilty of Specification Nos. 2 and 3.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Dr. Peter Galvin, Sergeant Michael Hengel, and Sergeant Margaret Roach as witnesses.

Dr. Peter Galvin

Galvin was a district surgeon. He also had a private practice and was chief of staff of Peninsula Hospital in Queens. His specialty was internal medicine. He was not board-certified in orthopedics, but saw patients with such symptoms on a regular basis.

Galvin was charged with the Special Medical District (SMD), located in Lefrak City. Officers were placed in the SMD if they were Chronic B Sick. This meant that in a 12-month period, an officer had 6 sick events, or 4 events with a cumulative number of 40 sick days. To leave the Chronic B list, an officer was required to refrain from going sick for 9 months. Galvin

stated that when officers became Chronic B, they signed a document acknowledging that "repeated failure to attempt to go to work after having been evaluated by the department surgeon, may result in administrative charges and possible suspension."

Galvin evaluated the Respondent several times, and testified about those evaluations using his notes. This began in August 2007, when the Respondent became Chronic B Sick.[1] Galvin believed that the Respondent was involved in a line-of-duty RMP accident. Her main complaint was neck and back pain, including back spasms. This could indicate a "mechanical back problem," like a herniated disc or pinched nerve.

Between August 2008 and November 25, 2008, Galvin estimated that he evaluated the Respondent five to ten times. Sometimes these were physical examinations in which he would manipulate the patient, but his practice also was to use information from private treating physicians. If that information is "reasonable it's acceptable to me. If it's unreasonable, I will pick up the phone and try to make contact with the physician writing a note." He used the information to evaluate the officer. Galvin would not repeat a physical examination if the patient's complaint was the same, her ability to move had not changed, and there was nothing new from the treating physician.

Galvin testified that the Respondent was sick on August 25, 2008. She was on restricted duty at the time. His evaluation of her lasted approximately five minutes. She had been seen by the Department orthopedist on August 20, 2008. The orthopedist approved the Respondent for full duty effective September 15, 2008, and she returned to full duty on that date. Galvin stated that he generally read the orthopedist's "consult" or spoke directly to that doctor.

At Galvin's evaluation on August 25, 2008, however, the Respondent complained of back spasms. He read the orthopedic consult and concluded that the Respondent could perform

[1] Galvin later testified that the Respondent had been Chronic B for three years.

restricted duty. Galvin did not make a notation whether the Respondent presented with a cane, but asserted that she "usually" or "almost always had a cane with her." Galvin testified that the Respondent usually "carried" the cane, as opposed to "actually leaning" on it. The doctor explained that "someone who uses a cane to help them ambulate or keep their balance, usually puts weight on the cane." On occasion the Respondent's cane "may have been lightly touching the floor," but did not lean on it. Galvin never saw her putting weight on the cane.

Galvin next evaluated the Respondent on September 10, 2008. She again complained of back pain. The Respondent stated that she had received trigger-point injections several weeks prior at her private treating physician's office. These were cortisone shots injected into the spine. The Respondent told Galvin they did not alleviate the pain. Galvin concluded, after the evaluation, that the Respondent still could perform restricted duty because nothing had changed in terms of her ability to sit, stand and walk. He did not note whether she presented with a cane.

Galvin testified that by September 10, 2008, the Respondent had also been seen by the Article 2 Medical Board, i.e., with regard to line of duty disability retirement. The Board examined her and disapproved her disability application twice. They had her full medical records at their disposal, while the district surgeons had only notes from her treating physicians. The Department orthopedist evaluated her after the Board, and deemed her fit for full duty.

Galvin next evaluated the Respondent on September 24, 2008, when she presented with cold or flu symptoms, like chills and sweats. She was going to see her private physician the next morning. She did not complain of back or neck injuries on this date. Galvin gave the Respondent several days off sick and then returned her to full duty (which she was already on, as it was after September 15, 2008).

Galvin's next evaluation was on October 11, 2008, when the Respondent was out sick. She stated that she had a stomach virus. She was going to her treating physician the same day but was not taking any medication. Galvin kept her out sick for one or two days. She did not complain of back or neck injuries.

On October 17, 2008, Galvin again evaluated the Respondent because she had failed to re-qualify at the gun range. She told Galvin that she had pain in her right shoulder and could not keep the gun up because it was too heavy. Galvin believed she meant that she could not hold the gun up due to pain. The Respondent told Galvin that she was only able to fire nine rounds, though the documentation said that she fired nineteen. Fifty shots were required to pass the test.

Galvin testified that the Respondent was carrying a cane at the October 17, 2008, visit, but not bearing weight on it. Galvin again felt she was able to perform full duty. The Respondent did not have any information from any treating physicians and Galvin did not consult with them.

The next day, October 18, 2008, the Respondent went sick and was evaluated by another district surgeon, Dr. Fensterer. The Respondent complained about back and neck pain. Fensterer noted that the Respondent had received several alternative treatments without relief. She was returned to full duty for October 20, 2008 (without a firearm).

Galvin's next evaluation of the Respondent was on November 7, 2008. He saw her for about ten minutes. She had her cane and "was carrying it as usual." She stated that four days earlier she received neck and back trigger-point shots but they did not help and actually made the pain worse. The Respondent stated that she was attending physical therapy. Galvin again concluded that she was fit for full duty.

Galvin testified that the Respondent went sick on November 22, 2008, a Saturday. She again presented with neck and back pain, but also had an abnormal electrocardiogram (EKG). The district surgeon for the weekend was Dr. Daly, who advised the Respondent to see Galvin on Monday, November 24, 2008.

Galvin saw the Respondent on November 24, 2008, for approximately ten minutes. He believed the visit was at 8:30 a.m. The Respondent was complaining of back and neck pain and was carrying her cane. Galvin's opinion of her EKG was that "it had some very nonspecific findings." By this, Galvin meant that nobody's EKGs are exactly the same, and that minor variations did not signal a serious problem. Galvin concluded that the Respondent could perform full duty. She was already in her tour of duty, and Galvin sent her back to her command.

At this point, Galvin asked Lieutenant Dominick Valenti, the commanding officer of the Absence Control and Investigations Unit (ACIU), to come in. Galvin felt that the Respondent "needed to be warned that her repeated sick episodes were going to put her in administrative jeopardy." She was admonished by Valenti, who advised her that she had multiple sick events, many occurring on or just before a weekend. Valenti told the Respondent "that if she went sick prior to her next scheduled tour, which was the next day, that she would most likely be suspended." Galvin testified that the Respondent did report sick on November 25, 2008, was evaluated by him, returned to full duty, and suspended.

On cross-examination, Galvin admitted that he generally adhered to the orthopedist's recommendation. He had not done a full examination of the Respondent, with her lying on a table and him palpating the symptomatic areas, since 2007.

Galvin acknowledged that pain was a subjective condition. He disagreed that back injuries were inherently more difficult to corroborate objectively than other injuries.

Galvin described his testimony as stating not that the Respondent was lying, but that the orthopedist and disability board had determined that she could still perform full duty with the pain she complained about.

Galvin admitted that generally, he did not have a long time to observe the Respondent before she entered the examining room. He did not "see her take a great many strides" on the days he evaluated her. Occasionally Galvin would enter the hallway and watch as his patients left, but he could not say whether he did that with the Respondent.

Galvin conceded that patients could use canes for many reasons. He agreed that an elderly person might carry one for balance, just in case. The cane "can simply be used for, if not literally metaphorically, as a crutch." Someone that uses a cane would probably still be able to walk without the cane, though possibly with more difficulty. It was "[t]heoretically" possible that a person with "some kind of chronic pain or condition where they have difficulty ambulating, might use a cane simply to conserve their energy . . . ." Someone might choose to take the cane for longer distances only. Also, if someone knew she would "be resting in [her] house for eight or ten hours," she might not use the cane right before that, but would if she knew she would be going out for a long period of time.

Galvin agreed that Valenti told the Respondent that "she is chronic B, she had been put back and could not call in sick again without finishing a tour." He stated that the Medical Division wanted to see "a good faith effort to return to work." Galvin agreed that the Respondent's "next tour" after Valenti's warning was "that day, the day that you put her back." Galvin stated, nevertheless, that she reported sick "prior to her next tour, which would have been the next day." He then again testified that "the tour when you put her back is still considered a tour . . . [i]f she went to work."

Galvin testified that the only treating physician notes he was given for the Respondent indicated that she had received trigger-point injections. Galvin agreed that the epidural injection, which the Respondent also received, would have been very painful.

Galvin did not recall reviewing a letter from Dr. Philip Fyman (who counsel indicated was a treating physician), which said the Respondent should not be returned to full duty because of her herniated discs. Galvin opined that because she was already disapproved twice for disability, and evaluated by two Department orthopedists who recommended full duty, such a letter would likely have had little effect.

Sergeant Michael Hengel

Hengel was assigned to ACIU and was working on October 17, 2008. At approximately 0715 hours, Hengel was driving to his office at Lefrak City. He was stopped in traffic on the westbound Horace Harding Expressway (HHE), the service road to the Long Island Expressway. The Medical Division office was located at the corner of HHE and Junction Boulevard.

Hengel observed the Respondent get out of a private vehicle that she had just parked, and cross "three lanes of traffic" on HHE. One of these lanes was actually used for parking. He was less than 20 feet from the Respondent at this time.

Hengel testified that the Respondent was "carrying a cane in her hand" and appeared to be walking normally. "When she got to the sidewalk in front of Lefrak," the Respondent touched the cane to the ground, but did not appear to use it to steady herself and walk. She did not appear to put any weight on the cane. Other than that, the Respondent's manner of walking was the same as when she crossed the road. Once the Respondent reached the sidewalk, it was approximately 100 feet to the entrance of the Lefrak Medical Division building.

When asked by the Advocate if it was "safe to say that she was walking without the assistance of the cane crossing three lanes of traffic and then walking with the assistance of the cane once on the sidewalk in front of Lefrak," Hengel answered, "I don't know if I would use the word assistance." He stated, nonetheless, that it did not appear that the Respondent needed it to walk in either place, "she was touching it to the ground."

Hengel did not yet know that the Respondent was a member of the service. When he saw her standing outside the SMD "with the cane on the floor," he informed Valenti of his observations.

Sergeant Margaret Roach

Roach was also assigned to ACIU. She was "given a referral" by Valenti after Hengel spoke to him about the HHE observation of the Respondent. Roach conducted observations of the Respondent at the officer's residence in Ronkonkoma. The residence was a townhouse-style home. Roach always parked near the rental office, but the Respondent parked in different locations.

On November 3, 2008, at approximately 1542 hours, Roach observed the Respondent park her vehicle, exit without a cane, and walk into her residence "without difficulty." Her tour was scheduled to end that day at 1540 hours.

On November 4, 2008, at approximately 1600 hours, Roach observed "the same thing, driving her vehicle and entering into a parking spot."

On November 10, 2008, at about 1648 hours, Roach observed the Respondent "entering a parking spot." She then went inside her residence, carrying packages, without the use of a cane. Roach believed the Respondent had worked a full tour on that day.

On November 11, 2008, Roach saw the Respondent leave her command, the 106 Precinct (the Ozone Park and Howard Beach areas), after a full tour. She was walking slowly and utilizing a cane. Roach got to the Respondent's residence at approximately 1758 hours. She saw the Respondent pull in, exit her vehicle, and throw a small bag into a dumpster. She was not using a cane. The dumpster was about 10 feet away from the Respondent's vehicle. The Respondent did not lift the bag over the dumpster. The Respondent got back in her car and sat for about 15 minutes. She then got out of the car, "using the cane" and walking slowly. Roach did not recall if the Respondent was putting weight on the cane.

On November 19, 2008, Roach observed the Respondent at her residence at about 1508 hours. She pulled into the parking complex, got out of the car, and walked into her house. She was not using a cane.

Roach testified that the Respondent was assigned to work a 0705x1540 tour on November 24, 2008. Based on the 106 Precinct command log, Roach determined that the Respondent began her tour at the Medical Division, and was post-changed from there "back to work in her tour." At 1240 hours, the Respondent "requested" a post change to attend physical therapy (PT) in Syosset. Roach testified that this was 30 to 33 miles from Ronkonkoma as measured by Mapquest. Roach determined that the Respondent did attend PT on that day.

Roach testified that when officers attend PT during a tour and finish before the end of the tour, they are supposed to contact their command and request lost time. The officer could also wait at the PT location; one reason for this is that the Department can account for where the officer is.

Roach stated that on November 24, 2008, the Respondent arrived home at approximately 1545 hours. She got out of her car and went inside her residence. She was carrying a bag and using her cane.

Roach asserted that the Respondent went end of tour from her residence, as opposed to the physical therapy appointment. According to Roach, she did not have permission to do so. The command log had a 1540 hours entry that the Respondent was end of tour from PT. Roach noted that the desk sergeant could give permission to sign out via outside wire, but the investigator did not interview that sergeant.

On cross-examination, Roach testified that the furthest the Respondent walked from her car to her residence was about the width of the trial room.

Roach added that on November 3, 2008, she continued her surveillance about four hours later. The Respondent had not left her residence.

Roach, referring to November 11, 2008, when the Respondent used her cane, admitted that she had no reason to believe the Respondent saw her watching.

Roach noted that on November 24, 2008, the Respondent could have been present at the Medical Division as early as 0600 hours, based on Galvin's work schedule.

Roach testified that the Respondent's physical therapy and the Syosset location were approved by the Department. The Respondent attended seven PT sessions in November 2008.

The Respondent's Case

The Respondent testified on her own behalf.

The Respondent

The Respondent was an 11-year member of the Department. On June 6, 2006, she was involved in an on-duty accident. She responded to a 10-85, which turned out to involve a stolen car chase. The stolen vehicle struck an RMP, which struck the Respondent's vehicle. She was tossed back and forth in the recorder seat, and sustained neck and back injuries. She was out a few weeks, then called in sick again. She was then "given another set of weeks," and placed on restricted duty. Approximately one year before trial, she was "denied by the medical board" (see Galvin's testimony, supra) and approved for full duty. When she attempted to re-qualify with her firearm, she could not keep her weapon up to fire all 50 rounds; she could only shoot 10 or 15.

The Respondent testified that she experienced "extreme pain" in her neck and back. The pain had persisted until and including the day of trial. It was "continuous," but some activities exacerbated it.

The Respondent contended that "since my car accident, my life has changed professionally and personally." She did not "do much" other than lying down at her home in Ronkonkoma and relaxing. She was unable to function as a patrol officer.

The Respondent testified that three different surgeons had recommended surgery called discectomy infusion for the neck and back. She had not had the surgery because she was afraid of the risk that her condition would worsen. She had also tried physical therapy, acupuncture, trigger-point injections, epidural injections, and "pain management," i.e., medication. These

included Percocet, Soma, Lyrica and Ambien. She was taking Zoloft for depression. This and other medications caused drowsiness, which she was experiencing during trial. She denied that any of her medications were affecting her testimony.

The Respondent stated that the Department approved her for PT, and she was allowed to go at the beginning or end of her tour. She said that PT helped with the pain temporarily, but in the long run it did not help and sometimes made the pain worse. On occasion the therapist wold put too much pressure on her back or literally would rub her the wrong way during massages. Each session lasted 40 minutes to an hour. Most recently, her PT was in Syosset.

The Respondent testified that the trigger-point shots, which injected cortisone to reduce inflammation, were also only a temporary fix. The epidural injections themselves, one in the neck and one in the back, were themselves excruciating. They were also mere temporary solutions and, the Respondent believed, made her symptoms worse.

The Respondent stated that she began using a cane to assist in walking about a year or two before the trial. She testified that she occasionally became dizzy, and used the cane for balance and coordination. She also got spasms "sometimes out of the blue," and used the cane to stabilize herself. Thus, sometimes she would "just carry the cane around with [her]." She did not necessarily bear weight on the cane because she did not use it to walk. When she did not have the cane with her, she was able to walk without it. It was possible that Hengel saw her cross the street, carrying the cane rather than utilizing it, because she wanted to cross in time before the light changed. She never told anyone that she was totally unable to walk without a cane.

The Respondent agreed that she parked about 20 feet from her residence, approximately the width of the trial room. This was 15 or 20 steps. Sometimes she used the cane to walk from her car to her home and sometimes not.

The Respondent testified that she was placed on Chronic absence lists. She agreed that the rules of going sick while Chronic were explained to her.

The Respondent stated that she was sick over the weekend of November 22-23, 2008. She was experiencing extreme pain in her neck and back. The Respondent believed she saw a physician other than Galvin at the Medical Division that weekend. The weekend surgeon told her to see her regular surgeon on Monday, November 24, 2008, which she did, at 0700 or 0800 hours. She was working day tours at this time, 0705x1540. Thus, she was already at work.

The Respondent testified that Galvin examined her and put her back to work for 0900 hours. She returned to her command, the 106 Precinct, and was assigned to meal relief for the telephone switchboard operator and station house clerk. Thus, she "never got any sick time," even though she was feeling "[t]errible" at work. She already had scheduled a PT session for that day. She was approved by the desk sergeant at 1300 hours to go to the session.

The Respondent asserted that she attended the session in Syosset, but did not recall when it ended. She admitted that she called her command to go end of tour "in my car," which was "[a]t my house." She knew that she was supposed to call from PT to let the command know she was finished. She claimed that she was already home when she remembered she had to do so.

The Respondent testified that she felt worse after the November 24, 2008, PT session. She had a "terrible night" with the pain, and the medication was not helping. At 0500 hours, she called in sick for her November 25, 2008, tour. Her understanding was that "once a physician

puts you back, you go back." Because she was put back to work on November 24, 2008, she did not believe she violated procedure.

The Respondent stated that Galvin never "actually did an examination of [her] body" or asked her "to perform any exercise."

On cross-examination, the Respondent conceded that Valenti informed her on November 24, 2008, of the procedure for calling in sick after being found fit for full duty. She asserted that she did not remember specifically what Valenti said, including whether he told her "to report for the next tour of duty, on the 24, or [she] would potentially face suspension."

The Respondent testified that in a prior case, she had received charges and specifications for reporting sick after being found fit for duty and "scheduled to report to [her] next tour of duty." She forfeited fifteen penalty days. She agreed that she was "well aware of the procedure" regarding sickness after a finding of fitness.

The Respondent told Galvin that PT was working temporarily but was not a long-term solution. She believed she told him that it would make the pain worse sometimes.

The Respondent conceded that she had been Chronic before the car accident, beginning in 2001, three years after she began working for the Department. She had been turned down about four times by the Article 2 Board.

The Respondent testified that she had a rotating "two and three" schedule. She asserted that her days off would fall in the middle of the week, so when she reported sick it was usually a Friday or Saturday. She was generally assigned to work on the weekend.

The Respondent agreed that she was generally more tired at the end of her tour. Sometimes she used her cane while carrying packages, and sometimes not. It was the same with throwing garbage in the dumpster or "crossing a busy street." When asked why Hengel observed

her switching to the cane, she stated, "If I had to step over something on the sidewalk, for balance, I have to use the cane."

On re-direct examination, the Respondent testified that in her previous case, she was Chronic B and called in sick after having been put back to duty, without appearing for a tour. She had reported sick because she was in a lot of pain and had to go the emergency room (ER). The "explanation that the Department gave" was that she should have reported to her command and gone sick from there rather than drive to the ER. She agreed with counsel that "they told you, when a doctor puts you back, you have to at least work a tour before you can attempt to call in sick." On November 24, 2008, when the surgeon put her on duty and Valenti said "you are back right now," she "consider[ed] that a tour."

The Respondent did not recall telling Galvin that she did not like being a police officer. She did not recall tell any uniformed member of the service that she was "afraid to sit in the squad car of the 106 Precinct."

On questioning by the Court, the Respondent stated that she had been assigned as meal relief on several occasions. She used her cane while performing this duty. She said that she carried the cane with her but did not "necessar[il]y walk with it." She purchased the cane on her own; no doctor told her to get it. At her current assignment in Manhattan Court Section, she did paperwork. She did not use the cane because she was fearful of getting suspended again.

The Respondent did not know whether her dizziness came from her neck and back pain, the medications, or both.

On further Department examination, the Respondent did not agree that she had not used a cane since her suspension. She was feeling "[t]errible" since then and had reported sick at least three and as many as fifteen times.

FINDINGS AND ANALYSIS

Specification No. 1

The Court finds the Respondent Not Guilty of the first specification. The charge is that on October 17, 2008, the Respondent "wrongfully exaggerated her injury or medical condition by using a cane to assist herself while reporting to the Medical Division." The specification further alleges that the Respondent later was observed "performing physical activities without the assistance of a walking aid."

On October 17, 2008, Hengel, an ACIU investigator, happened to observe the Respondent cross the Horace Harding Expressway next to Lefrak City. She was carrying her cane. When she reached the sidewalk, she began using the cane. As a result of those observations, a second ACIU investigator, Roach, conducted a surveillance of the Respondent at her residence. She saw her walking without the cane on four occasions. However, on two occasions during these surveillances, the Respondent did use the cane.

The specification does not explain precisely what the Respondent allegedly did on October 17, 2008, that constituted exaggeration, and specifically to whom she was trying to communicate that exaggeration. At trial, the Department theorized that the Respondent was trying to exaggerate to any Medical Division personnel that might have seen her. Hengel, however, only observed the Respondent by coincidence. There is no indication that the Respondent knew Hengel was watching her. Thus, whatever she did or did not do was not necessarily so that Hengel could see it.

Hengel observed the Respondent cross HHE and begin utilizing the cane. He did not, however, as the Department suggested on summation, characterize the Respondent as bearing any weight on the cane. In fact, he disagreed with the Department's assertion that she began

walking with the "assistance" of the cane once she got to the sidewalk. Hengel said that she was touching the cane to the ground. Hengel's testimony indicates that the Respondent used the cane for balance once she got to the sidewalk, as is consistent with her testimony. She testified that she did not carry the cane to walk, but for extra balance when she felt dizzy or had painful back and neck spasms. As she testified, "I am ambulatory but I need assistance at times."

Moreover, Hengel said that he saw her cross the road, carrying the cane in her hand and walking normally, about 100 feet from the entrance to the Medical Division. If she were walking with the cane in order to exaggerate to any Medical Division personnel that may have been present, then the Court fails to see why the Respondent would not have also expected observation while crossing the street.

Galvin, the SMD Surgeon, also observed the Respondent on October 17, 2008. In fact, as the district surgeon assigned to the Respondent, his in-person evaluations of her began several months before the ACIU surveillance. There was no evidence that the Respondent did anything in Galvin's presence that constituted an attempt at exaggeration. There was no testimony that she told him she could not walk without the cane. Additionally, Galvin testified, as did Hengel, that the Respondent did not lean or put weight on the cane. Galvin stated that the cane sometimes touched the floor lightly. This is consistent with the Respondent's testimony that she carried the cane at her side for occasional use.

The specification also charges, as alleged proof of an exaggeration attempt, that the Respondent was observed after October 17, 2008, performing physical activities without using the cane. Roach testified about these residential observations, for which no video exists. On November 4, 10, 11, and 19, 2008, Roach observed the Respondent exiting her vehicle and walking to her residence without a cane. On the 10th, the Respondent was carrying "packages."

No evidence was presented as to the nature of these packages or how much they appeared to weigh. On the 11th, the Respondent threw a small bag into a dumpster no higher than shoulder level.[2]

On two occasions, November 11 and 24, 2008, Roach observed the Respondent utilizing the cane. On the latter occasion, the Respondent was carrying a bag. Roach either did not recall or did not testify about whether the Respondent was bearing weight on the cane.

Roach's observations failed to prove an attempt by the Respondent at exaggeration because they showed exactly what the Respondent testified, that sometimes she utilized the cane and sometimes not. Even if the Court were to consider Galvin's testimony that only an elderly person would use a cane in the occasional way asserted by the Respondent, Roach observed her both using the cane to walk and walking without it. These observations indicate that the Respondent, despite her relative youth, was using the cane precisely as she claimed.

This matter is different from other malingering cases. For example, in *Case No. 83467/07*, an officer with knee injuries, who allegedly could not walk or sit for long periods, was observed on video near a Medical Division office considerably limping and walking with a cane. Later, on video near her residence, she was observed, inter alia, stepping onto her SUV's running board to put her children into the car and get in herself, and lifting a stroller and putting it in the back of the vehicle. She was not using a cane and only once appeared to be very slightly limping.

In contrast, there was no evidence that the Respondent limped or otherwise emphasized to others her use of the cane. Accordingly, because the Department failed to prove by a preponderance of the evidence that the Respondent's actions with regard to the cane either on

[2] There was testimony from Galvin and the Respondent that she failed to qualify at the gun range because she could not lift the firearm. The Department did not charge her with a false statement in this regard. The Court nevertheless notes that Roach did not state which arm the Respondent used to throw out the bag.

October 17, 2008, or later, signaled an exaggeration attempt, the Court finds the Respondent Not Guilty of Specification 1.

Specification No. 2

The second specification charges that the Respondent, a Chronic B Sick employee, called in sick for her next tour after she was found fit for duty by the Special Medical District Surgeon. Dr. Galvin, the SMD Surgeon, testified that Valenti, the commanding officer of Absence Control, verbally gave this warning to the Respondent when she was present at the Medical Division on November 24, 2008, and was found fit. She was not reporting sick on this date; rather, she had reported sick over the weekend, and the district surgeon covering that day told her to see Galvin on the 24th. She was scheduled to work on November 24, 2008, and appeared at the SMD, permissibly, during her tour. After her evaluation, the Respondent returned to her command and performed her assignment. (Toward the end of her tour, she was permitted a post change to go to physical therapy, see Specification No. 3, infra).

The next day, November 25, 2008, the Respondent was again scheduled to work, and reported sick. At trial, she argued that she was not in violation of the relevant Patrol Guide procedure because she went back to her command and worked on November 24, 2008 – and that this counted as her "next scheduled tour of duty."

The charge is predicated on the warning contained in Patrol Guide § 205-45:

> Category "B" members found fit for duty after examination by the Special Medical District Surgeon and who report sick again for the SAME reason prior to their next scheduled tour of duty, may be suspended from duty without pay if upon subsequent examination by a surgeon, no objective findings of such illness or injury are found.

The question here is what is meant by "next scheduled tour of duty." By its plainest meaning, the Patrol Guide procedure would indicate that November 25, 2008, was the

Respondent's "next scheduled tour" because she was already working her tour of November 24, 2008. Nevertheless, the procedure does not specifically address a scenario like the instant one, where a member goes to the SMD during one tour, is found fit for duty, completes her tour, and calls in sick for the tour right after that.

The Court finds that the most natural meaning is that the Respondent's "next" tour was this second tour, November 25, 2008, and not the continuation of November 24, 2008's tour. When the Respondent appeared at the SMD on November 24, 2008, she was working; when she was examined, she was working; when she returned to her command, she was working. There was no period of time "prior to" the Respondent's continuation of her November 24, 2008, tour in which she could have reported sick because that tour had already begun. The first tour to which Patrol Guide § 205-45 could have applied was November 25, 2008, because this was the first tour that the Respondent reported sick "prior to." November 25, 2008, was the earliest tour that was after the fitness finding, and that had any time period prior to it. As such, "prior to" the Respondent's "next scheduled tour" referred to the period before November 25, 2008.

This is consistent with Galvin's description of Valenti's admonition: "if she went sick prior to her next scheduled tour, which was the next day, that she would most likely be suspended." It is also consistent with Galvin's statement that the Medical Division wanted to see "a good faith effort to return to work." The Respondent's ordered return to her command during working hours, shortened already by the Medical Division visit and to be shortened further by the physical therapy session, did not demonstrate that good faith. The district surgeon agreed with on cross-examination with counsel's description of the warning as: "[S]he is chronic B, she had been put back and could not call in sick again without finishing a tour." Galvin agreed with the attorney that the Respondent's "next tour" was "that day, the day that you put her back." The

Court is not bound by the doctor's answers to posed questions on cross-examination. It finds that Valenti's warning, taken from Patrol Guide § 205-45, meant that the Respondent could not report sick before November 25, 2008. Because the Respondent, found fit for duty by the SMD Surgeon, called in sick prior to that tour, the Court finds her Guilty of Specification 2.

Specification No. 3

In the third specification, the Respondent is charged with improper sign-out procedures at the end of her tour on November 24, 2008. The Respondent was working a 0705x1540 tour on that day. Her command was the 106 Precinct in Queens. At 1240 hours, she was given a post change to attend physical therapy in Syosset. She attended the PT session, and at 1540 hours, she called the precinct desk to sign out. The 106 Precinct command log reflected that she signed out from PT via an outside wire.

As the Department demonstrated, however, the Respondent's PT session had actually ended prior to that time. At 1545 hours, Roach observed the Respondent at her residence in Ronkonkoma, over 30 miles from Syosset. Even with a generous assumption of 60 miles per hour, the Respondent's residence was at least 30 minutes from the PT appointment. She could not actually have been present at the PT session at 1540 hours because Roach observed her at home at 1545 hours. When the physical therapy actually ended – at around 1500-1515 hours – the Respondent was obligated either to remain until her scheduled end of tour, or to call the desk and ask to use lost time to end the tour then. Although the Respondent pleaded Not Guilty, her attorney admitted in argument that she committed misconduct. As such, the Court finds her Guilty of Specification 3.

PENALTY

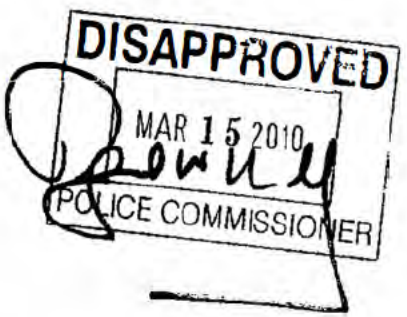
In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222, 240 (1974). The Respondent was appointed to the Department on October 7, 1998. Information from her personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent, who was designated Chronic B Sick, has been found Guilty of failing to report for work after being found fit for duty by the Special Medical District Surgeon. She has a prior Guilty adjudication for similar conduct, in which she was penalized 15 vacation days after a mitigation hearing (see *Case No. 82734/07*, signed Apr. 21, 2008). She has also been found Guilty here of failures related to signed out at the end of her tour. The Respondent called her command to be signed out from physical therapy, but she had actually arrived home already and the session had ended perhaps 45 minutes beforehand. By doing so, she made it appear that she was at PT until 1545 hours, when she was only there until 1500 or 1515 hours.

In light of the totality of this misconduct, the Court recommends that recommends that the Respondent be DISMISSED from the New York City Police Department, but that her dismissal be held in abeyance for a period of one year, pursuant to Section 14-115 (d) of the Administrative Code of the City of New York, during which time she is to remain on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. The Court further recommends that the Respondent forfeit the 30 days already served on suspension. See *Case Nos. 74084/99 & 74313/99*, signed Aug. 18, 2000 (30 suspension days and 1 year probation for Chronic B officer who called in sick after being found fit for duty, and who was out of residence while reporting sick, without authorization).

Respectfully submitted,

David S. Weisel
Assistant Deputy Commissioner – Trials



POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ANOOPAM ATTARI
TAX REGISTRY NO. 921937
DISCIPLINARY CASE NO. 84870/09

In 2008, the Respondent received an overall rating of 2.5 "Competent/Low" on her annual performance evaluation. In 2006 and 2007, she received an overall rating of 3.0 "Competent." [redacted]

The Respondent has been the subject of one prior disciplinary adjudication. In 2008, she was found Guilty of not reporting for her scheduled tour of duty after being found fit for duty by the district surgeon. For her misconduct, she forfeited 15 vacation days. Based on her overall record, the Respondent was placed on Level-II Discipline Monitoring in January 2009.

For your consideration.

David S. Weisel
Assistant Deputy Commissioner – Trials